

REMARKS

Initially, Applicants thank the Examiner for reconsidering the pending claims in light of the Amendment submitted April 13, 2004, and entered April 16, 2004, and for re-opening prosecution on the merits.

Claims 1-21 and 23-44 are all the claims pending in the present application, claim 22 having been canceled by Amendment A dated November 7, 2003. Claims 1-19 and 29-44 stand rejected under 35 U.S.C. § 102(e) as anticipated by newly-cited United States Patent (USP) 6,457,021 to Berkowitz et al. (Berkowitz). Claims 21, 23-26, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over newly-cited USP 6,324,587 to Trenbeath et al. (Trenbeath) in view of newly-cited USP 6,505,175 to Silverman et al. (Silverman).

The Examiner has not specifically addressed claims 20 and 27, but has noted (at the top of page 2 of the outstanding Office Action) that “all rejections made in the Final Office Action are withdrawn.” Notwithstanding the withdrawal of the previous rejections, the Examiner has neither indicated that claims 20 and 27 are allowed nor asserted new grounds for rejection; accordingly, the record is unclear regarding the status of these claims. Applicants respectfully decline to guess at the status of claims 20 and 27 at this time.

Applicants traverse the foregoing prior art rejections of claims 1-19, 21, 23-26, and 28-44, and request reconsideration and allowance of all the pending claims based upon the following remarks.

Aspects of the present invention have previously been addressed in detail on the record; Applicants provide a brief summary as follows. A system and method operative in accordance with the present application provide various advantages through, at least in part, use of replicated, or duplicated, data. In accordance with one embodiment wherein data are replicated, each data record carries with it essential information about the transaction to which it relates (*see, e.g.*, the text at page 10, line 15, and continuing to page 12, line 11, of the present application). As described in the present application and recited in the pending claims, each of a plurality of “*customer facing utility systems*” employed by the system and method is “adapted to communicate with *customer systems*,” and has “associated therewith authoritative data that is writable . . . and read-only data” (independent claims 1, 8, and 17; independent claim 21 includes similar language). Additionally, every pending claim includes an element directed to “replicating data written to said authoritative data of *any one of said customer facing utility*

systems to the authoritative data of *each of the other customer facing utility systems*” (independent claims 1, 8, and 17; again, independent claim 21 includes similar language). It will be appreciated that the foregoing claim language makes a distinction between a “customer system,” on the one hand, and a “customer facing utility system,” on the other hand.

The Rejections Under § 102(b)

As noted above, claims 1-19 and 29-44 stand rejected under 35 U.S.C. § 102(e) as anticipated by Berkowitz. To anticipate a pending claim under any of the various subsections of 35 U.S.C. § 102, a single reference must teach every element recited in the pending claim; as set forth in more detail below, the Berkowitz patent, like the Lupien patent asserted in the previous Office Action, is more deficient than the Examiner acknowledges.

Regarding the terse rejection at page 2 of the outstanding Office Action, Applicants object to the Examiner’s brief summarization of the claims. Specifically, the Examiner has identified various elements and functionalities that are not recited in every pending claim, and has failed to identify which claims recite which specific features; additionally, the Examiner has paraphrased claim language and made unqualified statements (without citing specific claims) regarding operational characteristics of the claimed system and method. Applicants submit that each pending claim should be evaluated in accordance with its respective recitations, and not in accordance with the Examiner’s simplified summary. Every pending claim is separately allowable for its respective combination of elements as set forth below.

Regarding the newly-cited Berkowitz patent, the Examiner has cited the following passages: Abstract, lines 1 and 5-12; Fig. 1, reference numerals 22 and 50; column 1, lines 60-65; and column 2, lines 1-6 and 21-25. In particular, the Examiner has asserted that the Berkowitz “disclosure of a plurality of *clients* that are capable of manipulating *common data* meets the claimed *customer facing utility systems* and *street side systems* . . . because there is nothing in the claims that requires the *customer facing utility systems* and the *street side systems* to be distinct physical components” (emphasis supplied). Applicants submit that the Examiner’s conclusion regarding the customer facing utility systems with respect to the street side systems, whether accurate or not, is not relevant, since it is clear from the language of the claims that the claimed “*customer facing utility systems*” are distinct from the “*customer systems*,” this represents a distinction that the Examiner has yet to appreciate. The Berkowitz patent, at best, teaches a “*customer system*” (client) as described and claimed in the present application; the

reference neither teaches nor suggests a “*customer facing utility system*” as described and claimed. Applicants identified this same deficiency in the previously asserted Lupien patent, and successfully traversed the Examiner’s rejections via the Remarks articulated in the paper filed April 16, 2004.

Specifically, the Examiner’s suggestion that “a plurality of clients that are capable of manipulating common data” (taught in Berkowitz) is equivalent to “a plurality of customer facing utility systems” as recited in claims 1, 8, 17, and 21 is unfounded, and represents a fundamental misunderstanding of the subject matter called out in the pending claims. As with the Examiner’s position regarding the Lupien reference advanced in the prior Office Action dated January 27, 2004, analogizing Berkowitz’s “clients” with the “customer facing utility systems” described and claimed in the present application is improper. In that regard, whether Berkowitz’s various “clients” share memory or manipulate common data is not remarkable, since Berkowitz fails to teach or even to suggest a “customer facing utility system” as described in the present application (*see, e.g.*, FIG. 1 and the text beginning at page 6, line 19, and continuing through page 7, line 6, of the present application) and as specifically recited in the pending claims. In particular, each recited “customer facing utility system” is “adapted to communicate with *customer systems*” (the only potentially relevant teaching of Berkowitz) and with others of “a plurality of *customer facing utility systems*” (a feature which is clearly lacking in the scope and contemplation of the Berkowitz patent).

In summary, while the Berkowitz patent teaches “a plurality of *clients* which manipulate data” (column 2, lines 21-25; emphasis supplied), those “*clients*” are, at best, analogous to the clients 23a-23x, 25a-25y, and 27a-27z illustrated in FIG. 1 of the present application and called out as “*customer systems*” in the pending claims. Whether these *clients* taught in Berkowitz “are capable of manipulating common data” as the Examiner has asserted is irrelevant with respect to whether they “meet[] the claimed customer facing utility systems and street side systems.” The data communication described and claimed in the present application is occurring between system components (at least “a plurality of customer facing utility systems”) neither taught specifically nor even suggested by the fair teachings of the Berkowitz patent.

Additionally, even assuming that the Examiner’s characterization, articulated at page 2 of the Office Action, of the fair teachings of Berkowitz is accurate, Applicants submit that a “database system having a shared memory” is insufficient to anticipate the pending claims.

Specifically, while the Berkowitz patent teaches a “database manager . . . responsible for writing the new data into the *shared memory*” (column 2, lines 1-6; emphasis supplied), the Examiner has failed to appreciate that such a *shared* memory is not relevant to the allowability of the subject matter called out in the pending claims. Each “customer facing utility system” recited in the pending claims includes its own associated data, as exemplified by the following language from claim 1: “*each of said customer facing utility systems having associated therewith authoritative data that is writable to by said customer facing utility system and read-only data*” (emphasis supplied). Independent claims 8, 17, and 21 recite similar language. In that regard, FIG. 2 of the present application and the description thereof at page 8, lines 12-34, are instructive.

Further, the Berkowitz patent fails to teach or even to suggest the “replicating” recited in every pending claim. For example, claim 1 includes the following language: “means for *replicating data* written to said authoritative data of any one of said customer facing utility systems *to the authoritative data of each of the other customer facing utility systems*” (emphasis supplied). The other independent claims include similar language. The foregoing “replicating” operation does not implicate the “customer systems” (Berkowitz’s “clients”), but rather the “customer facing utility systems,” *i.e.*, system components which Berkowitz neither teaches nor suggests. The Berkowitz patent fails to disclose or even to contemplate such replicating, at least because in the context of a *shared memory* system such as described in Berkowitz, such replicating is not necessary.

This “replicating” was another deficiency identified in the Lupien patent; Applicants successfully traversed the rejection as set forth in the paper filed April 16, 2004. Specifically, the claimed “customer facing utility systems” reside in locations independent of the “clients” contemplated in Berkowitz and identified by the Examiner. Accordingly, the “replicating” described and claimed in the present application is not occurring with respect to “clients” as the Examiner has presumed, but rather between (at least) “customer facing utility systems,” which are neither taught nor suggested by the Berkowitz patent.

As set forth in detail above, the Berkowitz patent fails to teach or even to suggest a system including “*a plurality of customer facing utility systems*” adapted to communicate with both “*customer systems*,” on the one hand, and *other “customer facing utility systems,”* on the other hand, as described in the pending application and as particularly recited in pending

independent claims 1, 8, 17, and 21. The Berkowitz patent also fails to teach or even to suggest the “replicating” element recited in every independent claim.

Accordingly, the asserted Berkowitz patent fails to teach every element recited in the pending claims, and is therefore insufficient to anticipate the claims as asserted by the Examiner. At least for the reasons set forth above, Applicants respectfully submit that the rejections under 35 U.S.C. § 102(b) are improper, and that claims 1-19 and 29-44 are allowable. At least for the reasons articulated above with specific reference to claims 1, 8, 17, and 21, their respective dependencies are also allowable. Further, dependent claims 2-7, 9-16, 18-20, and 23-44 are allowable for their respective recitations as well.

The Rejections Under § 103(a)

As noted above, claims 21, 23-26, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the newly-cited Trenbeath patent in view of the newly-cited Silverman patent. Applicants respectfully submit, however, that Trenbeath fails to teach what the Examiner has asserted it does, and Silverman, while still failing to supply the clear deficiencies of Trenbeath, is not a proper reference, in any event.

In particular, at page 3 of the outstanding Office Action, the Examiner has asserted the Trenbeath patent as teaching “receiving a customer transaction request at one of a plurality of customer facing systems (col. 11, lines 35-38 and 61-63),” as well as “replicating the transaction request record to data associated with the other customer facing utility systems (col. 16, lines 23-26 and 47-52).” The portions of Trenbeath cited by the Examiner, however, relate only to identifying “clients” (*i.e.*, customer systems) as “publication” clients or “subscription” clients, and address aspects of the data communication between these elements. The Examiner’s inference that a “client” (whether a publication client or a subscription client) is somehow equivalent to a “customer facing utility system” as recited in the pending claims is erroneous, as set forth above, and fails to attribute meaning to both the “customer systems” language and the “customer facing utility systems” language called out in the pending claims. Accordingly, even if accurate, the Examiner’s supposition (that Trenbeath teaches data communication between “client” systems) is not material to the allowability of the pending claims, since the reference fails to teach or even to suggest a distinction between a “client” system, on the one hand, and a “customer facing utility system” as described and claimed in the present application, on the other hand.

Similarly, the Examiner's suggestion that combining the fair teachings of Trenbeath and Silverman may "ensure that . . . pending orders are executed properly" misses the point of the present application, and fails to address the "customer facing utility system" element recited in every pending claim. Even if the respective teachings of Trenbeath and Silverman can be combined to suggest "writing said transaction execution record to data storage associated with said one street side system," the combination still fails to teach both "a plurality of customer facing utility systems" (independent of the "clients") and employing replicated data as described and claimed in the present application. Specifically, the combination of Trenbeath and Silverman, even if appropriate, still fails to teach every element recited the pending independent claims; the combination of documents therefore fails to render obvious claims 21, 23-26, and 28.

Additionally, the present application claims the benefit of a provisional application Serial No. 60/156,814, filed September 29, 1999. This priority is indicated at least as follows: in the first paragraph of the present specification; in the transmittal documents submitted with the present application; and on the official Filing Receipt mailed March 14, 2001. Accordingly, the earliest effective filing date for the claims pending in the present application is September 29, 1999, which pre-dates the October 6, 1999, filing date of the Silverman patent. The Silverman patent, therefore, is not available as a reference under 35 U.S.C. §§ 102(e) and 103, and the combination of Silverman with any valid reference is improper. As noted above, the Silverman patent fails to supply the deficiencies of Trenbeath, in any event.

As set forth above, the Examiner has failed to establish a *prima facie case* of obviousness, and the rejections under 35 U.S.C. § 103(a) are improper. At least for the reasons set forth above with specific reference to claims 1, 8, 17, and 21, their respective dependencies are also allowable. Further, claims 23-26, and 28 recite additional features and combinations of elements, and Applicants submit that these claims are additionally allowable for their respective recitations as well.

CONCLUSION

Based at least upon the foregoing Remarks, Applicants respectfully submit that all the pending claims are allowable, and that the present application is currently in condition for allowance. The Examiner is encouraged to contact the undersigned at 858-509-4007 if it is believed that a discussion may advance the prosecution of this case.

Applicants believe that no fee is required at this time. If Applicants are mistaken in that regard, please apply any charges or credit any overpayments to Deposit Account No. 50-2212.

Dated: January 19, 2005

Respectfully submitted,



Victor J. Castellucci
Registration No. 43,535

PILLSBURY WINTHROP LLP
11682 El Camino Real, Suite 200
San Diego, CA 92130
(858) 509-4007
Attorney for Applicants